
LAW OFFICES OF E. PATRICK MORRIS
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

12/03/2014

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SBLAFCO
105 E. Anapamu Street
Santa Barbara, CA 93101

Re: December 4, 2014 Agenda Information Item 2; "Update" RE Santa Rita Hills Community Service District

Dear Members of the Commission:

This communication regrettably comes on short notice, as we just received the agenda and Executive Officer's report on this item on December 1.

The recent history of SRHCSD is that beginning in at least the middle of 2013, it stopped conducting any business related to its legal obligation to design, build, improve and/or maintain roads and other limited infrastructure within its boundaries (See SBLAFCO Resolution 03013)5)(B).)

Testimony given under oath by the District's former "General Manager," John Wallace and the Wallace Group's chief engineer, Dace Morgan, is that all such projects are on "hold," and that for more than a year and a half SRHCSD has spent the taxpayer's money only on efforts to construct the access road outside its boundaries it is expressly prohibited from constructing as a condition of its formation. (03-13(5)(D).) The District's roads are a shambles. Often (as today) they are impassable because they never have been repaired, much less improved by SRHCSD.

In late 2013 my office conducted an investigation of those purporting to serve as the Board of Directors of the CSD. Without a Board of Directors duly elected, the District may not legally act. (Govt. Code §61045(b).) A duly constituted Board, with a quorum by majority, is required to take all actions, including those regarding finances. (Section 61045.)

Our investigation started with the requirement imposed by this body on SRHCSD that it be governed by a 5 member Board of Directors consisting of voters registered and residing within the District. (03-13(5)(A).)

Our investigation proved that not one of those who were serving on the SRHCSD Board actually resided within the District. We made those findings public, and almost immediately, one board member, Mr. Mario Moreno, terminated his membership on the Board. As you are now aware, not one of the persons who has acted for the last two years as a Board member was willing to file a new declaration of candidacy swearing that they reside within the District, as to do so would be a criminal offense.

It is for these reasons that SRHCSD no longer has a single person serving as a Board member; those who claimed to do so did so based on false declarations of candidacy. There simply can be no doubt that, effective with the certification of the last election this Friday, SRHCSD will not have a Board of Directors, thus it cannot operate under the conditions of approval mandated by this body in SBLAFCO Resolution 03-13, or the Government Code.

Now, this Commission has before it an "Executive Officer's Informational Report" on the situation, including the efforts (allegedly by "landowners" but actually by SRHCSD itself) to form a "Bridge & Highway" district with eminent domain powers.

In analyzing this report, this Commission needs to keep in mind that Mr. Hood, despite knowing of my clients' extreme interest in these matters and having been asked to include my clients in any discussions about SRHCSD, has instead held numerous meetings with a non-quorum of the SRHCSD "board" and other individual landowners, as well as lawyers hired by that group to condemn my clients' land, but he has not bothered to discuss these matters with my clients, who comprise 20% of the taxpaying landowners, and when asked what he discussed with the others, has claimed he cannot recall what he has discussed, and claims he has no notes to provide in response to Public Records Act requests.

Contrary to SBLAFCO's executive officer's "informational" report (it should be noted that a report that only tells one side of an issue can hardly truly be considered "informational"), the Board of Supervisors has no legal right to "appoint" any Board for SRHCSD.

There is no statute or case that allows the Santa Barbara County Board of Supervisors to appoint a Board of Directors of SRHCSD when no one runs for the posts. While it is true that Government Code §1780 permits a Board of Supervisors to appoint someone to fill a "vacancy" on a local district Board of Directors, that statute does not apply to the failure of anyone to run for the Board positions. Govt. Code §1770 defines "vacancy." The failure of anyone to run for election to a Board is not included anywhere in its definitions of vacancy.

The definition of no one serving on the Board of Directors of a governmental entity that must by law be governed by such a board is effectively that the entity no longer exists, and certainly has no further power to take any action, much less expend public funds for any reason. There being no responsible elected officials to govern SRHCSD, it should not be allowed to collect or disburse taxpayer dollars.

Also contrary to the Executive Officer's report, there is no "reorganization proposal" If there is one, why is this commission not being informed of its content? Even if there might someday be such a "proposal," this Commission must now deal with the situation as it exists, not as it might at some unknown time in the future. As it exists, SRHCSD is unable legally to act; allowing it to continue to act is to condone illegality.

Including one called just recently on a Sunday just 5 minutes before the 24 hour notice period expired, the outgoing SRHCSD "Board" has held special meetings and unanimously voted on a number of "resolutions" designed to allow the District to continue to conduct its business, particularly on its efforts to condemn an access road, and to continue to spend taxpayer money, even after it has no elected officials accountable for so doing.

Included in these resolutions was the formation of an "Ad Hoc Finance and Operations Committee" consisting of SRHCSD "General Manager" Gary Keefe (who, of course, has never been elected) and Dale Petersen who is a resident of Lompoc, not the District, and who as of Friday will no longer be a "Board" member.

The enumerated purpose of this new two member "committee" is to continue the operations of the SRHCSD without an elected Board by authorizing the "committee" to spend District money, approve payment of warrants, shift money between budget categories, etc. This is illegal.

By law, "ad hoc" committees are limited to "advising" the Board regarding policies, including finances. Such committees have no independent power to do anything. (Govt. Code 61048.)

There being no "Board" for this "ad hoc" committee to "advise," the "Ad Hoc Finance and Operations Committee" recently appointed has nothing to do that the law would permit it to do, and by law the action of approving expenditures is the province of the Board, not some un-elected, two person "advisory" committee advising no one and accountable to no one.

According to the "informational" report of the EO, the District is working with the County Auditor on how to deal with the money held in its name. Who is "working" with the Auditor? Is it an un-elected, non-accountable individual? No one will be authorized to take any action for SRHCSD the day after this Commission meets.

As you are also aware, SRHCSD has been diverting nearly all of its resources for more than a year solely to the project of condemning an access road outside its boundaries, over Cargasacchi Ranch. It has paid well over one hundred thousand dollars to Wallace Group as "District Engineer," even though not a moment of engineering has been done for more than a year, and tens of thousands more in taxpayer dollars have been dissipated for private landowner interests by having the SRHCSD, in secret ballot conducted in closed session, secretly hire at taxpayer expense the personal attorneys of one particular landowner, one with whom the EO and counsel have met on more than one occasion, to help this landowner and a few others condemn land for the very access road SRHCSD is specifically prohibited from constructing.

Contrary to positions taken by counsel for this body, the issue before you is not one of contesting any one expenditure. Mr. Dillon's position that SBLAFCO should not be involved because this is an "expenditure" issue is a red herring. I challenge Mr. Dillon to provide a single legal authority for the proposition that you have no power over expenditures if this entity you created, particularly when that expenditure is contrary to the conditions of formation you imposed. I have posed that request to Mr. Dillon, and he has refused to respond.

The illegal activities of SRHCSD and its alleged "Board," attorney, and general manager are pervasive, and they are illegal, immoral, and unethical. Condoning or ratifying these activities by silence and inaction is the same as performing them.

We note for the record that my clients' concerns are not about an "expenditure," they are about the refusal of the enabling body to restrict violations of the conditions of formation it imposed, especially with respect to special taxes and assessments it permits; corrupt policies of advancing individual landowner's agendas using public funds without regard to law or fact, through the assistance and/or acquiescence of the immediate oversight elected officials and those they control; and flagrant disregard for open government requirements by those who practice it, and those who turn a blind eye to it.

Effective December 10, 2014 SRHCSD, which has no elected governing body, only a "committee" of one currently elected but shortly non-elected and one individual who has never been elected, will receive to its account another \$195,000 in property tax revenue, \$40,000 of which is taxed from my clients. SRHCSD intends to, as it has for more than a year, use that money, not for any of the purposes for which it was formed, improving internal infrastructure, but rather to condemn an external access road outside its SOI and in direct violation of the express condition of its formation that your Commission imposed.

This past year, SRHCSD secretly added a new expenditure, again not directly related to its permissible activities under 03-13, but in pursuit of which it has spent tens of thousands of taxpayer dollars over the last 9 months.

In March of this year, one of innumerable "closed sessions" was held by the three persons claiming to be the SRHCSD Board. This closed session was listed on the agenda

as being for the purpose of meeting with "land negotiators." The closed session was suspect from the beginning because there had never previously been any agenda item, much less action taken, with respect to SRHCSD acquiring any land through payment, much less appointing any "negotiators" for land not being purchased.

Under the Brown Act, a closed session meeting with real property negotiators may not take place unless, in open session, the agency identifies the real property in question by reference to the actual parcels subject to negotiation, the individuals who will act as its negotiator, and the persons with whom its negotiator may negotiate. By law, such a closed session must be limited to discussions of "the price and terms of payment" in the real property negotiations. (Govt. Code §54956.8.)

Other than announcing that John Wallace and Gary Keefe were the "negotiators," no other mandatory notice was provided at the meeting. No land to be acquired was identified, nor were persons with whom the negotiations would take place named.

Not surprisingly, my clients objected to the lack of notice but, as usual, the attorney who allegedly represents the District, Michael Seitz, announced that all laws had been complied with and the closed session then proceeded for more than 40 minutes, at the end of which it was reported that no action had been taken. That was a lie.

My office possesses a transcript of that meeting, legally obtained, which demonstrates that the purpose of the meeting was to decide, in secret, on a course of action to deal with the fact that no Board member was legally permitted to serve, and that the District was about to have insufficient directors to even operate, as well as to commence the petition for formation of a Bridge & Highway district using SRHCSD taxpayer funds.

Gary Keefe (who is, as you know, as sitting member of the SB Grand Jury) willingly entered that meeting and participated therein, during which there were no discussions about real property that was in negotiation to be purchased (there was no such property, and such an issue has never been on any agenda).

The closed meeting session was not to discuss price and terms of payment for real property, the only subjects allowed to be discussed in closed session. The meeting was to charter a course of condemning Cargasacchi land, dealing with the illegality of the Board, and reporting on agreements between Mr. Keefe and Messrs. Dillon and Hood about how SBLAFCO would deal with the plan for condemnation.

That meeting was illegal, in all respects.

The meeting was conducted by Mr. Keefe and attorney Seitz, who announced that the CSD had come to a "watershed moment." Mr. Keefe reported to those present about his discussions with Messrs. Dillon and Hood of this body had assured them that SBLAFCO would not assist, nor interfere with SRHCSD's efforts to build the access road.

The persons present, Seitz, Wallace, Keefe, Petersen, Freeman, and Casey Marks then held a discussion wherein they decided that the efforts of the CSD would secretly turn to planning the formation of a "Bridge & Highway District," using the tax money taken by SRHCSD for internal roads and improvements.

Mr. Seitz was hired to do the legal research and prepare the proposal and petition. There was no discussion of SRHCSD negotiating to acquire any land, much less was there a discussion of price or terms of payment for land; only the hatching of an illegal, secret plan to jettison SRHCSD in favor of attempting to form the only remaining entity that these conspirators felt might allow them to condemn my clients' land.

Of course, none of this was on the "agenda" or disclosed to the public.

Since that meeting, without any public discussion, the plan hatched at that illegal, secret closed session has been carried out, using SRHCSD's taxpayer funded resources (the same ones they wish to continue using), with at least the tacit consent of SBLAFCO's Executive Officer and legal counsel.

At District taxpayer's expense, Mr. Seitz and other legal counsel have prepared documents to enable some landowners to circulate a petition necessary to form a Bridge & Highway District, and the District's administrative assistant has been paid with District taxpayer dollars to coordinate the petition.

On December 10, 2014 another \$195,000 will be taxed from the landowners within SRHCSD and used to further these already illegal activities, and there will be no elected body accountable to the citizens to manage or be held accountable for these expenditures. 20% of those taxes will come from my clients. That is improper, and illegal.

Contrary to Mr. Dillon's claims that it should not intervene, for which he can cite no supporting authority, SBLAFCO is in fact the oversight agency, and it needs to intervene immediately to prevent further activities of this District which has no elected leadership nor legally constituted governing body. Even if some "ad hoc" committee could legally dispense this taxpayer money, to have Gary Keefe and Dale Petersen, who willingly and knowingly have participated in secret meetings violating the Brown Act "control" that money is a real life example of letting the coyotes watch the hens.

The conduct of these so called "public servants" was and is criminal. It cannot be condoned or aided or abetted in any way. For more than three years there has not be a legally selected and/or quorum of directors for SRHCSD. Meetings are often held with the necessary "quorum" director appearing by telephone from unknown locations; illegal secret sessions are routinely held under the guise of "litigation" that has never been filed; actions are taken without public meeting or vote and then ratified by public vote; and outright fabrications are reported for non-existent Board "action."

My clients wish to work with SBLAFCO on an immediate resolution freezing the assets of SRHCSD, which now has no public oversight due to having no elected board, and investigating the activities of that organization, and its continuing to operate in direct and open violation of its conditions of formation.

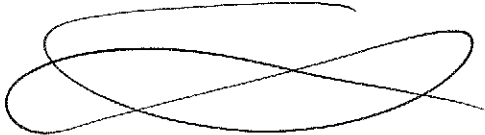
With no duly constituted Board for more than the last three years; in light of the fact that SRHCSD has not ever provided any services or facilities of substantial benefit to the land or landowners within its boundaries; without any assets other than cash; and having for much more than a year had no meetings to conduct any of the business its Resolution of formation authorizes it to conduct, SRHCSD is a prime candidate for dissolution at the earliest possible opportunity, either by special meeting or not later than the next scheduled meeting of SBLAFCO.

SBLAFCO must take action, or it will be permitting the use of public funds without direct accountability, utilizing individuals who willfully and knowingly participated in secret meetings involving illegal secret planning, where they knew the public was falsely told that only legally permitted issues were being discussed; and condoning the gross misuse of public treasury.

We thank you for your consideration of these critical issues, and implore you to take action before the matter proceeds to the state level.

Very truly yours,

LAW OFFICES OF E. PATRICK MORRIS



E. Patrick Morris, Esq.

Cc: Clients; Santa Rita Hills Community Services District